

EXHIBIT 1

Exhibit 1

Index Pursuant to Local Rule 81

All documents filed in state court in this action:

- (A) Summons and Complaint, filed January 27, 2020.
- (B) Affirmation/Affidavit of Service *Corrected*, filed on February 25, 2020.
- (C) Affirmation/Affidavit of Service *Corrected* Supplemental AOS/Mailing, filed on February 25, 2020.

TAB A

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF ERIE

DANIEL W. MILLER,

Index No.: 801222/2020

Plaintiff,

vs.

SPORTSMAN'S GUIDE, LLC
f/k/a THE SPORTSMAN'S GUIDE, INC.,
OUTDOOR TECHNOLOGY GROUP, LLC,
and
MAINSTREAM HOLDINGS, INC.

Defendants.

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk via the New York State Courts Electronic Filing System ("NYSCEF"), is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b)(3) of that Section.

Counsel and/or parties must either: 1) immediately record their representation within the e-filed matter on the Consent/Represent page in NYSCEF; or 2) file the Notice of Opt-Out form to claim one of the limited exemptions from mandatory e-filing (see below). Failure to record representation may result in an inability to receive electronic notice of any document filings. Claiming an exemption will require the exempt party to serve and be served with a hard copy of documents.

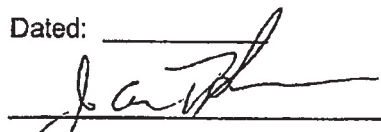
Counsel and unrepresented parties who intend to participate in e-filing must first create a NYSCEF account and obtain a user ID and password. For additional information about electronic filing, and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov; mailing address: 60 Centre Street, New York, New York 10007).

Exemptions from mandatory e-filing (Section 202.5-bb(e)) are limited to:

- 1) attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements; and

2) parties who expect to represent themselves and who choose not to participate in e-filing. (Such parties are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action is pending.)

Dated: _____



James T. Scime, Esq.

Lipsitz Green Scime Cambria LLP

42 Delaware Avenue, Suite 120

Buffalo, New York 14202

716-849-1333, ext. 339

716-855-1580 (Fax)

jscime@lglaw.com

FILED: ERIE COUNTY CLERK 01/27/2020 03:58 PM

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INDEX NO. 801222/2020

RECEIVED NYSCEF: 01/27/2020

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DANIEL W. MILLER
2875 Clinton Street
West Seneca, New York 14224,

Plaintiff,

vs.

SPORTSMAN'S GUIDE, LLC
f/k/a THE SPORTSMAN'S GUIDE, INC.
2800 Southcross Drive West
Burnsville, Minnesota 55306,

OUTDOOR TECHNOLOGY GROUP, LLC
1905 First Avenue North
Windom, Minnesota 56101,

and

MAINSTREAM HOLDINGS, INC.
1905 First Avenue North
Windom, Minnesota 56101,

Defendants.

Index No.

Plaintiff designates Erie
County as the place of trial

The basis of venue is
plaintiff's residence

SUMMONS

Plaintiff resides at
2875 Clinton Street
West Seneca, New York

County of Erie

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED, to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the plaintiff's attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

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DATED: Buffalo, New York
January 27, 2020

LIPSITZ GREEN SCIME CAMBRIA LLP

By 

JAMES T. SCIME, ESQ.

Attorneys for Plaintiff

Office and P.O. Address

42 Delaware Avenue, Suite 120

Buffalo, New York 14202

(716) 849-1333

[JTS : #65213.0001]

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NYSCEF DOC. NO. 1

INDEX NO. 801222/2020

RECEIVED NYSCEF: 01/27/2020

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DANIEL W. MILLER
2875 Clinton Street
West Seneca, New York 14224,

Plaintiff,

COMPLAINT

vs.

Index No.

SPORTSMAN'S GUIDE, LLC
f/k/a THE SPORTSMAN'S GUIDE, INC.
2800 Southcross Drive West
Burnsville, Minnesota 55306,

OUTDOOR TECHNOLOGY GROUP, LLC
1905 First Avenue North
Windom, Minnesota 56101,

and

MAINSTREAM HOLDINGS, INC.
1905 First Avenue North
Windom, Minnesota 56101,

Defendants.

Plaintiff, above named, by his attorneys, LIPSITZ GREEN SCIME CAMBRIA
LLP, for his Complaint against the defendants, alleges:

**AS AND FOR A FIRST CAUSE OF ACTION, AGAINST
THE DEFENDANTS, SPORTSMAN'S GUIDE, LLC
f/k/a THE SPORTSMAN'S GUIDE, INC., OUTDOOR
TECHNOLOGY GROUP, LLC AND MAINSTREAM
HOLDINGS, INC., THE PLAINTIFF, DANIEL W.
MILLER, ALLEGES:**

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1. The plaintiff, DANIEL W. MILLER, at all times hereinafter mentioned, was and still is a resident of the Town of West Seneca located within the County of Erie and the State of New York.

2. Upon information and belief, at all times hereinafter mentioned, the defendant, SPORTSMAN'S GUIDE, LLC (hereinafter referred to as "SPORTSMAN'S GUIDE"), was and still is a foreign corporation not authorized to do business within the State of New York; jurisdiction over the defendant is asserted under New York Civil Practice Law and Rules § 302.

3. Upon information and belief, the defendant, SPORTSMAN'S GUIDE, was formally known as The Sportsman's Guide, Inc., and was and still is doing business under the trademark of Guide Gear.

4. Upon information and belief, at all times hereinafter mentioned, the defendant, OUTDOOR TECHNOLOGY GROUP, LLC (hereinafter referred to as "OUTDOOR TECHNOLOGY"), was and still is a foreign corporation not authorized to do business within the State of New York; jurisdiction over the defendant is asserted under New York Civil Practice Law and Rules § 302.

5. Upon information and belief, at all times hereinafter mentioned, the defendant, MAINSTREAM HOLDINGS, INC. (hereinafter referred to as "MAINSTREAM"), was and still is a foreign corporation not authorized to do business within the State of New York; jurisdiction over the defendant is asserted under New York Civil Practice Law and Rules § 302.

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6. On or about the 23rd day of September, 2018, the plaintiff, DANIEL W. MILLER, was using a Sportsman's Guide Gear 20 foot climbing stick when it and/or its component parts broke causing plaintiff to fall to the ground below and sustain serious injuries as hereinafter set forth.

7. Upon information and belief, at all times hereinafter mentioned, the defendant, SPORTSMAN'S GUIDE, by its agents, servants and/or employees, designed, manufactured, assembled and/or placed on the market the said climbing stick and/or its component parts.

8. Upon information and belief, at all times hereinafter mentioned, the defendant, OUTDOOR TECHNOLOGY, by its agents, servants and/or employees, designed, manufactured, assembled and/or placed on the market the said climbing stick and/or its component parts.

9. Upon information and belief, at all times hereinafter mentioned, the defendant, MAINSTREAM, by its agents, servants and/or employees, designed, manufactured, assembled and/or placed on the market the said climbing stick and/or its component parts.

10. Upon information and belief, the hereinbefore described incident and the resultant injuries were caused as a result of the negligence, carelessness, recklessness and unlawful conduct on the part of the defendants, SPORTSMAN'S GUIDE, OUTDOOR TECHNOLOGY and MAINSTREAM, by their agents, servants and/or employees, in the design, manufacture and assembly of the climbing stick and/or its component parts and/or in placing the defective

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and hazardous climbing stick and/or its component parts on the market when they were in a dangerous, hazardous and defective condition.

11. Upon information and belief, the said climbing stick and/or its component parts, as designed, posed a substantial likelihood of harm when it was feasible for the defendants to design the product in a safer manner and the defective design was a substantial factor in causing plaintiff's injury.

12. Upon information and belief, the aforesaid incident and resultant injuries were caused as a result of the negligent, careless, reckless and/or unlawful conduct on the part of the defendants, SPORTSMAN'S GUIDE, OUTDOOR TECHNOLOGY and MAINSTREAM, by their agents, servants and/or employees, in the design, manufacture and/or assembly of the aforesaid climbing stick and/or its component parts and/or in placing the dangerous, defective and hazardous climbing stick and its component parts on the market.

13. As a result of the alleged incident, the plaintiff, DANIEL W. MILLER, sustained bodily injuries and was painfully and seriously injured, and some of the injuries may result in permanent defects; was rendered sick, sore, lame and disabled; sustained pain and suffering and shock to his nerves and nervous system; was caused to and did seek medical aid and attention; was caused to be confined to hospital, bed and home; was caused to and did incur great medical expense and may incur further medical expense; was caused to be incapacitated from his usual activities and employment, and may be further incapacitated.

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14. This action falls within one or more of the exceptions set forth in CPLR § 1602.

15. As a result of the foregoing, the plaintiff has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION,
AGAINST THE DEFENDANTS, ABOVE NAMED, THE
PLAINTIFF, DANIEL W. MILLER, ALLEGES:**

16. Repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "15" of this Complaint with the same force and effect as if fully set forth at length.

17. Upon information and belief, the defendants, SPORTSMAN'S GUIDE, OUTDOOR TECHNOLOGY and/or MAINSTREAM, by their agents, servants and/or employees, manufactured, designed, assembled and/or placed on the market the aforesaid climbing stick and/or its component parts.

18. Upon information and belief, the aforesaid climbing stick and/or its component parts were defectively designed, manufactured and/or assembled and were not reasonably safe when the defendants, SPORTSMAN'S GUIDE, OUTDOOR TECHNOLOGY and/or MAINSTREAM, placed the climbing stick and/or its component parts on the market.

19. The incident hereinbefore described and the resultant injuries were caused as a result of the defective and hazardous conditions of the said climbing

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stick and/or its component parts, and plaintiff claims damages against the defendants under the doctrine of strict products liability.

20. As a result of the foregoing, the plaintiff has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION, AGAINST
THE DEFENDANTS, ABOVE NAMED, THE
PLAINTIFF, DANIEL W. MILLER, ALLEGES:**

21. Repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "20" of this Complaint with the same force and effect as if fully set forth at length.

22. That upon the sale of the climbing stick and/or its component parts, the defendants, SPORTSMAN'S GUIDE, OUTDOOR TECHNOLOGY and/or MAINSTREAM, understood and had knowledge of the buyer's purpose as intending the product to be used as a method to ascend and descend trees for hunting purposes.

23. That the defendants, being aware of this purpose, explicitly and/or impliedly warranted to reasonably foreseeable users of the product, and ultimately to the plaintiff, that it was safe, of merchantable quality, free from defects and fit for the use intended.

24. That upon the sale and/or distribution of the climbing stick and/or its component parts, the defendants, SPORTSMAN'S GUIDE, OUTDOOR TECHNOLOGY and/or MAINSTREAM, warranted to all reasonably

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foreseeable users of the aforesaid climbing stick and/or its component parts that it was safe, of merchantable quality, free from defects and fit for the use intended.

25. That in choosing and utilizing the climbing stick and/or its component parts, the plaintiff relied on the skill and judgment of the defendants' express and/or implied warranties as described above.

26. That the defendants breached these warranties by providing a product that was unsafe, not of merchantable quality, defective and inherently dangerous and unfit for the use intended.

27. These breaches of warranties were a proximate cause of the injuries to the plaintiff.

28. As a result of the foregoing, the plaintiff has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, the plaintiff demands judgment against the defendants, either jointly or severally, in the First, Second and Third Causes of Action in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and for such other, further or different relief as the Court may deem just and proper, together with the costs and disbursements of the action.

DATED: Buffalo, New York
January 27, 2020

LIPSITZ GREEN SCIME CAMBRIA LLP

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By: 

JAMES T. SCIME, ESQ.

Attorneys for Plaintiff

Office and P.O. Address

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Buffalo, New York 14202

(716) 849-1333

[JTS : #65213.0001]

TAB B

FILED: ERIE COUNTY CLERK 02/25/2020 10:46 AM

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NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 02/25/2020

AFFIDAVIT OF SERVICE THROUGH THE SECRETARY OF STATE

SUPREME COURT
STATE OF NEW YORK, COUNTY OF ERIEPurchased/Filed: January 27, 2020
Index # 801222/2020

DANIEL W. MILLER

Plaintiff

against

SPORTSMAN'S GUIDE, LLC, ET AL

Defendant

STATE OF NEW YORK
COUNTY OF ALBANY

SS.:

James Perone, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on January 31, 2020, at 11:45 AM, at the office of the Secretary of State of the State of New York in the City of Albany, New York deponent served the annexed

NOTICE OF COMMENCEMENT OF ACTION SUBJECT TO MANDATORY ELECTRONIC FILING AND SUMMONS AND COMPLAINT on

SPORTSMAN'S GUIDE, LLC, the


Defendant in this action, by delivering to and leaving with Nancy Dougherty,

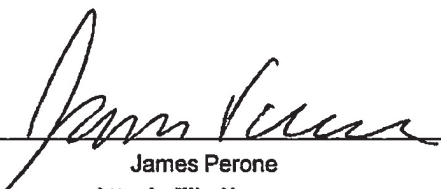
AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, 99 Washington Avenue, Albany, NY, 1 true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee 40 dollars; That said service was made pursuant to Section 304 Limited Liability Company Law. Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant

Description of the person served: Approx. Age: 55-60 Approx. Wt: 130lbs Approx. Ht: 5'3"
Color of skin: White Hair color: Black Sex: Female Other: _____

Sworn to before me on this

18th day of February 2020


HEATHER MORIGERATO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01MO6261464
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES MAY 14, 2020


James Perone
Attny's File No. 65213.0001
Invoice-Work Order # S1836153

SERVICO. INC.. P.O. BOX 871. ALBANY. NY 12201

TAB C

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NYSCEF DOC. NO. 3

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SUPREME COURT STATE OF NEW YORK, COUNTY OF ERIE

DANIEL W. MILLER

Index No.: 801222/2020

vs

SPORTSMAN'S GUIDE, LLC, ET AL

SUPPLEMENTAL AFFIDAVIT OF SERVICE/MAILING

James Perone ,being duly sworn, says:

I am over the age of 18 years and am not a party to this action. On **2/4/2020** I sent on behalf of the Plaintiff herein a copy of the

NOTICE OF COMMENCEMENT OF ACTION SUBJECT TO MANDATORY ELECTRONIC FILING AND SUMMONS AND COMPLAINT

with notice of the service upon the Secretary of State thereof to **SPORTSMAN'S GUIDE, LLC**, the Defendant herein, by **Registered** mail **#RF194463387US** in a securely sealed envelope with sufficient postage thereon with return receipt requested addressed to:

SPORTSMAN'S GUIDE, LLC

2800 Southcross Dr West
Burnsville, MN 55306

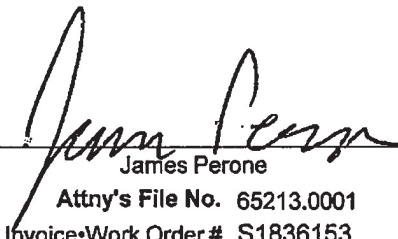
ATTACHED HERETO AND MADE A PART HEREOF IS THE

☒ RETURN RECEIPT FROM THE DEFENDANT☐ RETURNED MAIL☐ UNCLAIMED☐ RETURNED TO SENDER☐ UNDELIVERABLE AS ADDRESSED

Sworn to before me on this

18th day of February 2020

HEATHER MORIGERATO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01MO6281464
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES MAY 14, 2020


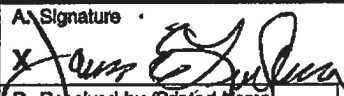


James Perone
Attny's File No. 65213.0001
Invoice•Work Order # S1836153

SERVICO, INC., P.O. Box 871, ALBANY, NY 12201

To Be Completed By Post Office Postage \$ \$0.85 Extra Services & Fees <input type="checkbox"/> Registered Mail \$ \$12.60 <input type="checkbox"/> Return Receipt (hardcopy) \$ \$2.85 <input type="checkbox"/> Return Receipt (electronic) \$ \$0.00 <input type="checkbox"/> Restricted Delivery \$ \$0.00 Total Postage & Fees \$ \$16.30 Customer Must Declare Full Value \$ \$0.00 Received by 02/04/2020 Domestic Insurance up to \$50.00 is included based upon the declared value. International Indemnity is limited. (See Reverse).		Extra Services & Fees (continued) <input type="checkbox"/> Signature Confirmation \$ <input type="checkbox"/> Signature Confirmation Restricted Delivery \$ Total Postage & Fees \$ \$16.30 Received by 02/04/2020 Domestic Insurance up to \$50.00 is included based upon the declared value. International Indemnity is limited. (See Reverse).	
OFFICIAL USE			
To Be Completed By Customer (Please Print) All Entries Must Be In Ballpoint or Typed FROM: ALBANY, NY 12206 SERVICO, INC. 283 WASHINGTON AVENUE ALBANY, NEW YORK 12206 TO: Sportsmans Guide LLC 2800 Southcross Dr west Burnsville, MN 55306			

PS Form 3806, Registered Mail Receipt
 April 2015, PSN 7530-02-000-9051
 For domestic delivery information, visit our website at www.usps.com
 Copy 1 - Customer (See Information on Reverse)

SENDER: COMPLETE THIS SECTION <ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: Sportsman Guide, LLC 2800 Southcross Dr west Burnsville, MN 55306  9590 9402 5346 9154 2539 06 2. Article Number (Transfer from service label) RF 194 463 387 US		COMPLETE THIS SECTION ON DELIVERY A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) Sam Luckner C. Date of Delivery 2-10-20 D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No 3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
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PS Form 3811, July 2015 PSN 7530-02-000-9053
 Domestic Return Receipt